

DATE: April 12, 2004

TO: Region Engineers
Region Delivery Engineers
TSC Managers
Resident/Project Engineers
Region Construction Engineers

FROM: Larry E. Tibbits
Chief Operations Officer

John C. Friend
Engineer of Delivery

SUBJECT: Bureau of Highway Instructional Memorandum 2004-14
Processing Contract Modifications (Supersedes BOH IM 2000-05)

This document is separated into four appendices:

- Appendix A: Requirements for FHWA, State Administrative Board or State Transportation Commission Review
- Appendix B: Approval Paths for Extras/Adjustments
- Appendix C: Procedures for Contract Modifications that Require Review by FHWA, State Administrative Board or the State Transportation Commission
- Appendix D: Frequently Asked Questions

The managing office engineer (e.g., project, resident, delivery, local agency, consultant engineer, or designee) is responsible for the day-to-day oversight of the contract. The managing office engineer will review the contracts they administer to determine whether modifications to the contract require review by FHWA, State Administrative Board, or the State Transportation Commission (See Appendix A).

CONTRACT MODIFICATIONS

Contract modifications are used to address contractual issues such as increases/decreases, extras and adjustments, contract completion time, and other miscellaneous changes to the contract. Three of these (extras, adjustments, and changes to the contract that result in overruns) will be covered by this BOH IM.

Extras/Adjustments

It is the responsibility of the managing office engineer to keep a running total of all extras and qualifying adjustments on each contract to determine when a contract modification needs to be reviewed by FHWA, State Administrative Board or the State Transportation Commission. Limits for review by each agency and an explanation of qualifying adjustments are found in Appendix A.

It is strongly suggested the managing office engineer discuss any potential contract modifications that require FHWA review with the FHWA area engineer prior to beginning work.

Extra Work is defined by the *2003 Standard Specifications for Construction* as “All work determined to be essential to the satisfactory completion of the contract. This work did not appear in the proposal as a specific item of work and was not included in the price bid for other items in the contract.”

Adjustment is defined by the *2003 Standard Specifications for Construction* as “A monetary revision to a contract unit price or to the entire contract.” Examples: Incentive, disincentive, liquidated damages, significant change in work.

Appendix B contains the approval paths the contract modification must follow for all extras/adjustments.

Appendix C contains the steps to process extras/adjustments that are over the limits set in Appendix A for review by FHWA, State Administrative Board or State Transportation Commission.

Overruns

Overruns are increases to existing bid items that boost the cost of the contract beyond 110 percent of the original bid price for the project.

Overruns are tracked automatically by the Contract Services Division. The Contract Services Division notifies the Construction Contracts Unit when projects are in overrun status. The Construction Contracts Unit then notifies MDOT’s resident engineer when a project moves into overrun status.

Appendix C contains the steps to process overruns that are over the limits set in Appendix A for review by the State Administrative Board or State Transportation Commission.

Summary

This BOH IM is based on current FieldManager technology and will be revised to reflect technology upgrades in future versions of FieldManager.

Meeting dates for the State Administrative Board and State Transportation Commission are available at <http://interchange.mdot.state.mi.us/finadmin/fsd/AdminSyvs/>.

Currently, the Construction Contracts Unit is developing a web site for frequently asked questions. The current questions and answers are attached to this BOH IM as Appendix D.

Delivery/resident/project engineers are requested to share this instructional memorandum with the local government engineers and consultant engineers within their jurisdiction.

Any questions about this BOH IM or any aspect of the contract modification process can be referred to:

Construction Contracts Unit
Construction and Technology Support Area
517-322-6630 or 517-322-1331

Chief Operations Officer

Engineer of Delivery

BOHD:C/T:BL:kab

Index: Contracts, Subcontracts

cc:	C & T Support Area Staff	OEO - S. El Ahmad
	Real Estate Support Area, M. DeLong	C. Rademacher
	Design Support Area, M. VanPortfleet	V. Blaxton
	Maintenance Support Area, C. Roberts	G. Moore
	Traffic & Safety Support Area, J. Culp	K. Reincke
	C & T Support Area, B. O'Brien	T. Fudaly, FHWA
	MRBA	MAPA
	MCPA	MCA
	MAA	AUC
	CRAM	MRPA
	ACEC	MPA

Appendix A

Requirements for FHWA, State Administrative Board or State Transportation Commission Review

FHWA

FHWA does not review overruns based on an increase or decrease of original bid items, nor do they review extras/adjustments on exempt projects. If the project does not need FHWA review, the managing office engineer signs in the FHWA block.

If a non-exempt project has an individual extra or adjustment over \$50,000, or a group of related extras (as a single issue) over \$50,000, the extra/adjustment must be reviewed by FHWA.

FHWA must review and approve extensions of time for federally funded contract modifications that include an incentive/disincentive provision with FHWA participation.

State Administrative Board

Contract Overruns

Original Contract Price	Overruns must go to the State Administrative Board when
\$24,999 or less	Total cumulative overruns exceed 25% of the original contract price
\$25,000 to \$49,999	Total cumulative overruns exceed 15% of the original contract price
\$50,000 or greater	Total cumulative overruns exceed 10% of the original contract price

Contract Extras and Adjustments

Original Contract Price	Extras and Adjustments must go to the State Administrative Board when
\$0 to \$800,000	Total cumulative extras and adjustments exceeds \$48,000 per contract
\$800,001 or greater	Total cumulative extras and adjustments exceed 6% of the original contract price, or Any individual extra or adjustment exceeds \$100,000

Reminders

- Most adjustments are included with extras to determine total dollar amount criteria for State Administrative Board review. Contract mandated adjustments such as price adjustments for incentives are not included with extras when determining whether an item goes to the State Administrative Board.
- Increases and decreases to extras and adjustments (but not increases to original bid items) are included in the contract extras and adjustments when determining whether an item goes to the State Administrative Board.

State Transportation Commission

Overruns go to the State Transportation Commission when total overruns reach 15 percent over the original contract amount.

Extras and Adjustments go to the State Transportation Commission when an individual extra is over \$250,000 or total extras reach 10 percent of the original contract amount.

Appendix B

Approval Paths for Extras/Adjustments

MDOT Administered Contracts

1. The managing office engineer prepares the contract modification and signs in the "Recommend By" block.
2. The original contract modification is forwarded to the contractor for review and signature.
3. The contractor returns the original signed contract modification to the managing office engineer. If not returned within 21 calendar days, the managing office engineer continues processing the contract modification and prints "contractor did not sign" in the contractor's signature block.
4. The managing office engineer forwards the contract modification to the TSC manager for review.
5. The TSC manager signs in the "Authorized By" block and returns the contract modification to the managing office engineer.
6. If the modification requires review by FHWA, State Administrative Board, or State Transportation Commission, see Appendix C.
7. If the project is federally funded and does not require FHWA review, the managing office engineer signs in the FHWA block for the FHWA and checks the approved line.
8. The managing office engineer updates FieldManager with the approved contract modification and forwards two clean copies to the Construction Contracts Unit.

MDOT Contracts Administered by Consultants

1. The managing office engineer prepares the contract modification and signs in the "Prepared By" block.
2. The managing office engineer faxes the contract modification to MDOT's resident engineer for review (see Reminders).
3. MDOT's resident engineer has 7 calendar days to review and respond to the contract modification by initialing the "Recommend By" block and faxing it back to the managing office engineer. The managing office engineer prints or types the MDOT engineer's name and date in the "Recommended By" block. If the contract modification is not returned within 7 days, the managing office engineer proceeds to the next step.
4. The managing office engineer forwards the contract modification to the contractor for signature.
5. The contractor returns the original signed contract modification to the managing office engineer. If not returned within 21 calendar days, the managing office engineer continues processing the contract modification and prints "contractor did not sign" in the contractor's signature block.
6. The managing office engineer forwards the contract modification to MDOT's resident engineer for review and recommendation for approval by the TSC manager.

7. The TSC manager signs in the "Authorized By" block and returns the contract modification to the managing office engineer.
8. If the modification requires review by FHWA, State Administrative Board, State Transportation Commission or the region engineer, see Appendix C.
9. If the project is federally funded and does not require FHWA review, the managing office engineer signs in the FHWA block for the FHWA and checks the approved line.
10. The managing office engineer updates FieldManager with the approved contract modification and forwards two clean copies to the Construction Contracts Unit.

Reminders

It is the option of MDOT's resident engineer whether or not every contract modification is reviewed. However, all contract modifications requiring FHWA, State Administrative Board, or State Transportation Commission review must be faxed to MDOT's resident engineer for review.

Local Government Contracts

1. The managing office engineer (or local agency consultant engineer) prepares the contract modification and signs in the "Recommend By" block.
2. The managing office engineer forwards the contract modification to the contractor for signature.
3. The contractor returns the original signed contract modification to the managing office engineer. If not returned within 21 calendar days, the managing office engineer continues to process the contract modification and prints "contractor did not sign" in the contractor's signature block.
4. The managing office engineer forwards the contract modification to MDOT's resident engineer for review and recommendation for approval by the TSC manager.
5. The TSC manager signs in the "Authorized By" block and returns the contract modification to the managing office engineer.
6. If the modification requires review by FHWA, State Administrative Board, State Transportation Commission or the region engineer, see Appendix C.
7. If the project is federally funded and does not require FHWA review, the managing office engineer signs in the FHWA block for the FHWA and checks the approved line.
8. The managing office engineer updates FieldManager with the approved contract modification and forwards two clean copies to the Construction Contracts Unit.

Appendix C

Procedures for Extras/Adjustments and Overruns that Require Review by FHWA, State Administrative Board, or State Transportation Commission

If Project Requires FHWA Review

1. It is recommended, where possible, that the managing office contact the FHWA area engineer about the contract modification before work begins.
2. The managing office must contact the FHWA area engineer concerning the contract modification. Include the following statement on the contract modification: “Discussed with (Name), FHWA Area Engineer. Approved for FHWA participation on (Date).”
3. Print on the top of the original contract modification **"Requires FHWA Approval."**
4. The managing office sends the original contract modification to the MDOT Construction and Technology Support Area's Construction Contracts Unit at the following address:

Construction Contracts Unit
MDOT-Construction and Technology Support Area
P.O. Box 30049
Lansing, MI 48909

5. The Construction Contracts Unit forwards the document to FHWA for review and approval. FHWA has 14 calendar days to review and approve the contract modification for federal participation.
6. Once approved, FHWA sends the signed original back to the Construction Contracts Unit.
7. The Construction Contracts Unit sends the approved contract modification back to the originating office to be approved in FieldManager. If FHWA has not returned the modification within 14 days, the Construction Contracts Unit will notify the managing office to approve the contract modification. The Construction Contracts Unit will return the original document when it is received from FHWA.
8. If all other approvals have been received, the managing office approves the modification in FieldManager and forwards two clean copies to the Construction Contracts Unit.

Reminders

- Exempt projects do not need to be reviewed by FHWA. These projects will be approved and signed in the FHWA block by the managing office engineer.
- Contract modifications that change the quantity of existing contract items do not need FHWA review, but require the managing office engineer's signature in the FHWA block.

If Project Requires State Administrative Board Review

Extras/Adjustments

1. The managing office engineer or TSC manager must stamp or print across the top of the contract modification **"Requires State Administrative Board Approval."**
2. The managing office sends the original contract modification to the MDOT Construction and Technology Support Area's Construction Contracts Unit. The contract modification must provide complete and accurate information and must be sent to:

Construction Contracts Unit
MDOT-Construction and Technology Support Area
P.O. Box 30049
Lansing, MI 48909

3. The Construction Contracts Unit will review the contract modification and contact the managing office engineer with questions and comments.
4. The Construction Contracts Unit will draft the write-up from the contract modification. The written explanation, taken from the contract modification, will be used as the justification for State Administrative Board approval. This explanation must include what is being proposed, where it is needed, why it is needed, how the cost is determined, and who will participate in the costs.
5. The Construction Contracts Unit will e-mail the write up to the TSC manager for review and approval by return e-mail.
6. The Construction Contracts Unit will submit the draft for several levels of review.
7. The Construction Contracts Unit will submit the finalized document for inclusion on the Transportation and Natural Resources (T&NR) and State Administrative Board agendas.
8. The item(s) will be placed on the next available T&NR agenda.
9. The Construction Contracts Unit will take the item to T&NR and answer questions.
10. Once the item is approved at T&NR, it is placed on the State Administrative Board agenda.
11. The item is taken before the State Administrative Board. The TSC manager may be required to attend the State Administrative Board meeting to answer questions concerning the item(s).
12. Once the contract modification has been approved by the State Administrative Board, it will be posted, stamped, and dated by the Construction Contracts Unit with the State Administrative Board approval date and returned to the managing office.
13. Approval must not take place in FieldManager until the originating office is notified of the State Administrative Board approval by the Construction Contracts Unit.
14. Once approved in FieldManager, two clean clear copies shall be mailed to the Construction Contracts Unit.

Reminders

Explanations must be included for line item increases or decreases of more than \$10,000 and for the establishment of all extras and adjustments. The explanation must indicate where the work was done, what was done, why it was needed, how the cost was determined, and whether the modification was pre-approved.

Overruns

1. The Contract Services Division will notify the Construction Contracts Unit when a project is in overrun status.
2. The Construction Contracts Unit will notify MDOT's resident engineer when their project is in overrun status. When appropriate, MDOT's resident engineer will inform the managing office engineer that their project is in overrun status.
3. The managing office engineer or MDOT's resident engineer will inform the Construction Contracts Unit when the project has been finalized.
4. The Construction Contracts Unit will draft a write-up for the State Administrative Board. The managing office engineer or MDOT engineer will assist in providing the details necessary to prepare the write-up by the Construction Contracts Unit.
5. The Construction Contracts Unit will submit the draft for several levels of review.
6. The Construction Contracts Unit submits the finalized document for inclusion on the T&NR and State Administrative Board agendas.
7. The item(s) will be placed on the next available T&NR agenda.
8. The Construction Contracts Unit will take the item to T&NR and answer questions.
9. Once the item is approved at T&NR, it is placed on the State Administrative Board agenda.
10. The item is taken before the State Administrative Board. The TSC manager may be required to attend the State Administrative Board to answer questions concerning the item(s).
11. Once approved by the State Administrative Board, the Contract Services Division will increase the contract budget. Payments will then be released to the contractor.

If Project Requires State Transportation Commission (STC) Review

Follow the same general procedures found above for the State Administrative Board review with the following exception:

In extras/adjustments replace No. 1 with the following:

1. The managing office engineer or TSC manager must stamp or print across the top of the contract modification **"Requires State Administrative Board and STC approval."**

Reminders

- Not all State Administrative Board contract modifications need State Transportation Commission approval. Please review Appendix A.
- A copy of the extra or overrun shall be sent to the region engineer for “information only” at the same time the originals are initially forwarded to the Construction Contracts Unit.

Appendix D

Frequently Asked Questions about Contract Modifications

Q 1. If my extra is 100 percent locally funded and my project falls within the criteria of Appendix A of BOH IM 2004-14, do I have to submit it for State Administrative Board or State Transportation Commission review?

A 1. Yes. Be sure to note in the explanation that the extras are 100 percent locally funded.

Q 2. The original contract bid for my project is \$1,000,000. I previously submitted an extra for \$61,000 and it was approved by the Ad Board. My current contract price is now \$1,061,000. If I have another extra for \$1,000, do I have to submit it for Ad Board approval since the total is below the 6 percent requirement?

A 2. Ad Board and Commission review criteria is always based on the original contract amount. Six percent of the original \$1,000,000 is \$60,000; therefore, if your total extras are over \$60,000, they must be submitted for review.

Remember: All extras (after you initially exceed the 6 percent or \$48,000), no matter how small, must go to the Ad Board for review. You do not get another 6 percent once the first has been approved.

Q 3. How do I process the contract modification that is going to put my project in overrun status and will require State Administrative Board review? When do I submit it to the Construction Contracts Unit?

A 3. You process your contract modification using the same procedures you would normally follow when processing any other contract modification. When Contract Services receives a request for payment that exceeds the allowable 110 percent, they notify the Construction Contracts Unit that your contract is in overrun status. Contract Services will issue no further payments until the State Administrative Board approves the overrun. Submitting a project a second time for overruns is not acceptable. Therefore, the Construction Contracts must wait for the job to be finalized before they can send your overrun to the State Administrative Board.

The answer to the second part of your question is that for overruns you send two copies of the contract modification to the Construction Contracts Unit after it is approved in FieldManager. You never submit the original contract modification for overruns like you would for an extra or adjustment.

Q 4. If I have an increased quantity of an existing bid item and an extra, can I submit them both on the same contract modification?

A 4. Yes you can, but you probably do not want to if the extras require further review (FHWA, State Administrative Board, State Transportation Commission). If you submit

the quantity increase by itself, it can be approved at the TSC level. If they are combined, nothing can be until the extra is approved.

Q 5a. If we decide it is better to use an open graded drainage course as the base instead of a dense graded aggregate base, is the new base an extra?

A 5a. Yes.

Q 5b. If the open graded drainage course aggregate base costs \$4.32/syd and the existing dense graded aggregate base costs \$3.32/syd and we are using 150,000 syd, do I submit the entire \$648,000 or \$150,000 the difference in cost between the two?

A 5b. You must always submit the entire amount for the extra item. However, be sure to mention the offsetting reduction in your "Description of Changes."

Q 6. If I have an incentive that places my extras over the 6 percent mark, do I have to send it to State Administrative Board? What if it is a disincentive?

A 6. No to both questions. BOH IM 2004-14 states in Appendix A that "Most adjustments are included with extras to determine total dollar amount criteria for State Administrative Board review. Contract mandated adjustments such as incentives are not included with extras when determining whether an item goes to State Administrative Board."

Q 7. I have a contract modification that contains three extras. Each is under \$100,000, but the total contract modification totals \$150,000 and the total extras for the job are less than the 6 percent. Does this go to State Administrative Board?

A 7. This one works kind of like the requirements for federal review. If all three items are independent of one another, then the items do not go to the State Administrative Board. If the three items are related to the same activity or incident, then they do go to the State Administrative Board.

Q 8. When do I need to send a contract modification to the Construction Contracts Unit?

A 8. The easy answer is always, but it is a matter of timing. If your extra needs FHWA, State Administrative Board or State Transportation Commission review, the original contract modification is sent to the Construction Contracts Unit for processing.

Two copies of your contract modification are always sent to the Construction Contracts Unit after the modification has been approved in FieldManager.

When and where you send your contract modification is documented in Appendix B, Approval Paths for Extras/Adjustments, of BOH IM 2004-14.

Q 9. I have an existing extra in FieldManager that I want to modify so we can make use of available federal funding on another portion of the contract. How do I do this?

A 9. You cannot do this. Once an extra is created, it can no longer be moved to another category using a modified original. An easy way to remember this is that an extra is not an original contract item, so you cannot use the modified original to change it.

Just because you cannot modify an extra does not mean you cannot do what you need to do. Try this: Create another extra in the correct category and then if the original has not been approved, delete it. If the original contract modification has been approved, you can reduce the existing extra to zero.

Q 10. If my contractor cannot make bid item 23A because of the weather, can I use a modified original to substitute bid item C1 11?

A 10. If the item (in this case C1 11) is not in the contract, then it is an extra by definition. You can never change the bid item by using a modified original. Remember to note the reduced use of 23A in your explanation of why you needed the extra.